RESERVED

Criminal Reference No.1 of 2001

Connected with

Jail Appeal No.101 of 2001

Mani Ram …… Appellant

Versus

State of Uttaranchal …… Respondent

……..

Hon. A.A.Desai,C.J.
Hon.M.C.Jain,J.

(Delivered by Hon'ble M.C.Jain,J.)

The accused/appellant Mani Ram was tried by the Sessions Judge,Pithoragarh, in S.T.No.28 of 2000. By judgment dated 27.03.2001, he has been convicted and sentenced to death u/s 302 I.P.C. for committing the murder of his wife and mother-in-law and to undergo ten years rigorous imprisonment u/s 307 I.P.C. for attempting to commit murder of three others. Aggrieved, he has preferred this appeal from jail.

Learned Sessions Judge, who passed the impugned judgment and order, has also made a reference u/s 366.Cr.P.C. for confirmation of death sentence passed against the accused/appellant.

Board essentials of the incident and the evidence may be set forth. The incident took place on 30.05.2000 at about 9.30 a.m. in the Sasural of the accused/appellant situated in village Kwaran, Patti Patharkhani, Tahsil and District Pithoragarh. He had been married with the deceased Vidya Devi daughter of another deceased Kamla Devi one or two years before this incident, Vidya Devi was residing with the accused/ appellant, but 2-3 days before the incident, she had been fetched by her mother Kamla Devi to her own house and the accused/appellant had also accompanied the two ladies. On the day of incident, the accused/appellant asked his wife Vidya Devi to come back with him to his own house. However, she as well as her mother Kamla Devi told him that that was Tuesday and it was inauspicious for a married lady to return to her Sasural from the house of her parents on that day. Both the ladies implored him to stay there for a day or so more. Thereafter, Vidya Devi could return with him to his house. The accused/appellant did not agree and insisted to take Vidya Devi with him that very day and as the two ladies did not abide by

his wishes, he picked up a sharp edged weapon(Bariath) and started striking blows on the two ladies, who died of the injuries then and there. At that time Vidya Devi was carrying pregnancy of 3-4 months. Vidya Devi's cousin sister Chandrakal was also inside the house at that time. Taken aback by the ghastly incident, she rushed out of the house and raised shouts attracting her mother Jyanti Devi to the scene. The accused/appellant, after committing the murder of his wife and mother-in-law, also came out of the house with sharp edged weapon and caused injuries to Chandrakala's mother Jayanti Devi. Another Jayanti Devi who was the step mother of Vidya Devi had gone out of the house with her son Vijay Kumar to a little distance. She also rushed up with him on hearing the shouts of Chandrakala and while fleeing the accused/appellant caused injuries to her and Vijay Kumar also with the sharp edged weapon that he had. He managed to make his escape good towards jungle with the weapon of assault.

The report of the incident was lodged with the concerned Patwari by P.W.3 Kishan Singh at 11 a.m. on 30.5.2000.The three injured ,namely,Chandra Kala's mother Jayanti Devi, another Jayanti Devi and Vijay Kumar were sent for medical examination. The investigation was taken up as usual which culminated into the submission of charge-sheet against the accused/appellant.

At the trial, the prosecution examined seven witnesses including the doctors, scribe of the F.I.R. and eye witnesses,namely, Km. Chandra Kala,P.W.1, her mother Jayanti Devi,P.W.2 and another Jayanti Devi,P.W.4, step mother of the deceased Vidya Devi.

Accused/appellant admitted the incident and his presence at the spot. He also admitted in his statement u/s 313,Cr.P.C. that his wife and mother-in-law had not acceded to his request for his wife's commit with him to his house on the ground that being Tuesday, it was an inauspicious day. It was also his case that he had insisted that she was to go with him to his house that very day urgently. However, his defence was that his mother-in-law brought a sharp edged weapon "Darati" and she as well as his wife started assaulting him therewith. He happened to snatch the weapon from them and used the same in his self defence. He also admitted to have caused injuries with sharp edged weapon to Chandrakala's mother Jayanti Devi, Vijay Kumar and his wife's step mother Jayanti Devi. He did so in his self defence. To be short, the time and place of incident are admitted to the accused/appellant, but he has raised the

bogey to having used the sharp edged weapon on the deceased and the injured in his self defence.

It would be relevant to state here as a passing reference that as per the post mortem reports of Vaidya Devi and Kamla Devi, wife and mother-in-law respectively of the deceased, they had received a number of incised wounds including on head and had died due to shock and haemorrhage owing to sharp edged injuries received on head. The wife of the deceased was aged about 24 years hand his mother-in-law was aged about 45 years.

Jayanti Devi(setp mother of Vidya Devi) had also received incised wounds including of left side of neck. She was aged about 35 years. Her son Vijay Kumar had also received two incised wounds, one of which was on right side of neck and the other on lower part of right ear. Jayanti Devi w/o Umed Ram also received two incised wounds, one on the right side of upper hack and another on the shoulder region. The injuries of all of them were grievous.

The appeal having been preferred by the accused/appellant from jail, we appointed Sri Sandeep Tandon, Advocate as amicus curiae on his behalf . We have heard him as well as learned A.G.A. on behalf of the State. We have also gone through the evidence and material on record.

The only argument from the side of the accused/appellant is that he acted in self defence and the case is covered by part I of section 304 I.P.C. We have given our thoughtful consideration to the matter. It is pertinent to observe that the theory of self defence advanced by the accused/appellant does not deserve a moment's attention. It is significant to point out that there is nothing to indicate that he received any injury in the incident. It does not stand to reason at all the while engrossed in conversation with the accused/appellant on the issue of one of them (his wife) going to house with him on that day of Tuesday, his mother-in-law would have brought out a sharp edged weapon. There does not appear to be any grain of truth in a plea of self-defence raised from the side of the accused/appellant in the absence of any injury having been sustained by him in the incident. The said plea of the accused/appellant does not stand the test of judicial scrutiny. In case he had dis-armed the two ladies of the weapon without suffering any injury at their hands, then that was the end of the matter. There was hardly any occasion for him to strike blows with the sharp edged weapon on them, cutting short their lives mercilessly and also injuring three others with that weapon on their vital parts. Therefore, on careful

perusal of the evidence on record and the attending circumstances, we are of the view that the theory of self defence has rightly been rejected by the trial Court and we are in agreement with the view taken on this aspect of the matter.

Actually, the incident took place in the manner as alleged by the prosecution. Infuriated by the refusal of two ladies that his wife would not go with him on that day of Tuesday, he took up the sharp edged weapon which was available in his Sasural and struck repeated blows on the two ladies, putting an end to their lives and while fleeing from the scene he caused injuries with the same weapon on Jayanti Devi w/o Umed Ram, another Jayanti Devi(step mother of his wife) and her son Vijay Kumar. Consequently, we reject the argument that the case falls under part I of section 304 I.P.C.

It has now to be considered as to whether the case falls in the category of rarest of rare cases calling for the extreme penalty of death. No doubt, double murder committed by him was brutal in nature. However, the shocking nature of the crime should not induce an instinctive re-action as regards the consideration of quantum of punishment. The entire set of attending circumstances has to be taken note of to come to a judicial finding as to what punishment should be awarded to the offender. Regard is to be had to this aspect of the matter that it was not a pre-meditated act of the accused/appellant. He had come to his Sasural with his wife and mother-in-law one or two days before the incident in normal circumstances. He had no arm with him. He was unarmed initially at the time of the incident also. The incident occurred at the spur of moment. He was engrossed in conversation with his wife and mother-in-law to persuade them that his wife should accompany him to his house that very day. But the two ladies were adamant in putting their feet down refusing his desire on the ground that being Tuesday it was an inauspicious day. It appears that the accused/appellant, who was a rustic, lost his temper and blood quickly rushed to his head when he saw that his wife was not accompanying his to his house that day. In the heat of passion and out of frustration and desperation, he picked up sharp edged weapon lying nearby in his Sasural and mercilessly struck repeated blows on his wife and mother-in-law, who died then and there. As a natural instinct, he came out of the house with the weapon of offence and assaulted Jayanti Devi wife of Umed Ram, another Jayanti Devi (step mother of his wife) and her son Vijay Kumar, who were close relatives of his wife and mother-in-law and happened to cross his way outside the house. He did so to avoid resistance from their side in order to escape and in over anxiety to get away from the scene of occurrence. As a matter of fact, he

himself is the greatest sufferer of this criminal offence committed by him in the circumstances aforesaid. Out of the two ladies murdered, one was his wife, who was carrying pregnancy of 3-4 months and the root cause of the incident was that he wanted to take her to his house that very day. May be that great affection that he cherished for his wife was the reason of his insistence to take her that very day. But the anger turned his head and he happened to commit this unpardonable felony. In such backdrop, we form the opinion that this is not the rarest of rare cases calling for the extreme penalty of death for the two murders committed by him. The ends of justice would be met by awarding him life imprisonment u/s 302,I.P.C. for the double murder committed by him and ten years R.I. u/s 307 I.P.C. for attempting to commit murder of three others/namely Vijay kumar, Jayanti Devi and another Jayanti Devi w/o Umed Ram. Both the sentences should be directed to run concurrently.

To terminate the discussion, we dismiss the appeal so far as the conviction of the accused/appellant Mani Ram u/s 302,I.P.C. and 307 I.P.C. is concerned, but we modify the sentence passed against him as under-selfing aside the draft sentence: Accused appellant Mani Ram shall undergo life imprisonment u/s 302 I.P.C. and ten years R.I. u/s 307 I.P.C. Both the sentences shall run concurrently. He is already in jail. He shall serve out the sentences as awarded to him.

Sri Sandeep Tandon, Amicus Curiae, who argued the appeal on behalf of the accused-appellant shall get Rs.3000/- as his fee.

Criminal Reference no.1 of 2001 made by the Sessions Judge is hereby rejected.

Let a copy of the judgment alongwith record of the case be immediately sent down to the Court below for needful compliance under intimation to this court within two months positively.

(M.C.Jain, J.) **(A.A.Desai, C.J.)**

June 18, 2001